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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925.

ORIGINAL, No. 19. IN EQUITY.

STATE OF MICHIGAN, PLAINTIFF,

vs.

STATE OF WISCONSIN, DEFENDANT.

REPLY BRIEF FOR THE STATE OF MICHIGAN.

ANDREW B. DOUGHERTY,
Attorney General;

CARL D. MOSIER,
Assistant Attorney General;

MEREDITH P. SAWYER,
Special Counsel,
Attorneys for Plaintiff, State of Michigan.

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Bill
Michigan Boundary
Commission

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Intent of Congress.

Plaintiff has contended in this suit that the Michigan Enabling Act describes a boundary between Michigan and Wisconsin consisting of four subdivisions as follows:

1. Montreal River from its mouth to the center of the lake at its head.
2. A straight line from that point to the nearest headwater of the Menominee River.
3. Thence down the main channel of that river to Green Bay, and

4. Thence through the center of the most usual ship channel of the bay to the center of Lake Michigan.

Such a boundary would consist of permanent lines of nature in three of the four subdivisions. These lines would not require intricate surveys in order to locate them, nor would they be dependent on the accuracy of the maps in use. Nature had already placed in that unexplored region two river systems which almost compassed the territory Congress intended Michigan should have. The headwaters of these two river systems were comparatively only a short distance apart. Therefore a straight overland line connecting them, simple to lay out, would add the completing link to the chain.

In considering the intention of Congress, we must constantly bear in mind that this entire region of country was unexplored and uninhabited, except by bands of hostile Indians. Many of the prominent geographical and topographical features were unknown to Congress.

The Michigan Enabling Act made no effort to minutely detail and define a boundary. It proceeded solely on the knowledge that Congress had—knowledge of true facts as they now appear—that this boundary would consist in the main of the two river systems. A straight line connecting their headwaters made the boundary complete.

We are not asking the Court to indulge in wild presumptions when we say this record in its entirety supports no other reasonable construction.

The Michigan Enabling Act describes the boundary in question as follows:

“* * * Thence in a direct line through Lake Superior to the mouth of the Montreal River; thence through the middle of the main channel of the said river Montreal to the middle of the Lake of the Desert; thence in a direct line to the nearest head-water of the Menominee River; thence, through the middle of that fork of the said river first touched by the said line, to the main channel of the said Menominee River; thence down the center of the main channel of the same to the center of the most usual ship channel of the Green Bay of Lake Michigan; thence through the center of the most usual ship channel of Green Bay to the middle of Lake Michigan * * *.”

Congress did not intend that a line should be run from some *indefinite* point in the main channel of the Montreal *overland* to the Lake of the Desert. No words used indicate at what point in the river the *overland* line would commence. If that point were left to be determined by some surveyor, he might have interpreted such point to be the middle of the main channel at the mouth of the river at Lake Superior. No one would contend that Congress had thus sought to establish a point of departure. But the act says:

“* * * to the mouth of the Montreal River; thence *through* the middle of the main channel * * *.”

“Through the middle of the main channel” does not mean that Congress intended to fix a *point*. That had been done, namely, *the middle of the main channel at the mouth*. So, with the point fixed, the line then proceeds.

Where does the line proceed to?

There is nothing in the language of the act to indicate that it was now to leave the river, but rather that it must follow the main channel to another definite point. This point Congress established. It is the middle of the Lake of the Desert.

Congress Knew the Lake Now Known as Lake Vieux Desert Was Not Connected with the Montreal River.

If the above be true, then obviously Congress referred to another lake of a group known by that name, or another lake known as Lake of the Desert.

The information furnished to Congress is in full accord with this theory and not in accord with any other. We shall discuss the knowledge Congress possessed in defining this boundary in Michigan's Enabling Act of June 13, 1836.

NOTE.—The exhibits and proofs upon which we rely on this portion of our case are too extensive and cumbersome to permit their reproduction and printing in this brief. We can here only refer to the original exhibits on file.

1. Lucius Lyon had arranged for New York publishers to send their maps to the Senate Committee (prior to February 15, 1836). This had been done. Plaintiff's Exhibit 51.

The only map covering the involved district published in New York near that period is plaintiff's Exhibit 59.

Assuming that map to be a later edition of the maps sent to Congress, it becomes apparent that Congress knew that the small lake at the head of the Montreal was named the "Lake of the Desert."

On that map Lake Vieux Desert appears in its proper location.

2. On February 19th Henry Schoolcraft attended a meeting of the Senate Judiciary Committee. Plaintiff's Exhibit 40.

Henry Schoolcraft knew that the Montreal did not arise in Lake Vieux Desert. Plaintiff's Exhibit 40.

"WASHINGTON, *Feb. 20th*, 1836,
Saturday Morning.

DEAR SIR:

Since seeing the committee yesterday I have reflected upon the character of that portion of the Lake Superior region, lying west of Vieux Desert Lake, *extending to the mouth of the Montreal*. It embraces the barren primitive district of the Porcupine Mountains and nothing more.

* * * * *

If such a line cannot be obtained, it would be most expedient in my opinion to throw the entire geographical basin of Lake Superior into Michigan, to which it naturally belongs, *by running a land line from Vieux Desert Lake west to* * * *.

Very respectfully yours,

HENRY R. SCHOOLCRAFT."

HON. L. LYON.

3. Congress had the Burr map of March 11, 1836, describing all the lakes on the height of land as "Les Lac Vieux Desert." Plaintiff's Exhibits 6 and 7.

This map was prepared by the draughtsman of the House of Representatives within a few days of the time when the Michigan Enabling Act was drafted.

On it the small lake at the head of the Montreal is one of the group. A copy of this map, bearing a line from the

small lake to the nearest headwater of the Menominee, was filed in the Library of Congress. Plaintiff's Exhibit 7.

Another copy, with the line indicating the boundary, was found among the personal effects of Lucius Lyon, in a bundle of newspapers bearing dates 1834 to 1836. Plaintiff's Exhibit 6.

4. The Farmer map of 1829 (Plaintiff's Exhibit 5) was the only map indicating the Montreal as rising in Lake Vieux Desert shown to be in existence in the United States at that time. No indication exists that Congress knew of or saw such a map. It has no connection with the boundary issue except as it was the means of misleading Lucius Lyons in 1839. Defendant's Exhibit 22. In the same respect the Judson map of 1838 misled Captain Cram. Plaintiff's Exhibit 175.

Summary of Important Dates.

1836, Feb. 15. Congress received the New York maps. Plaintiff's Exhibit 51.

Feb. 19. Schoolcraft attended Senate Committee. Plaintiff's Exhibit 40.

Feb. 20. Schoolcraft wrote Lyon indicating that he knew that Lake Vieux Desert was not connected with the Montreal, and that he had seen a fairly accurate map of the Montreal, and was looking for and could not find an accurate map of the Menominee. Plaintiff's Exhibit 40.

Feb. 21. Lyons wrote friends a description of the boundary substantially as finally adopted. Plaintiff's Exhibit 52.

Mar. 2. First description of this boundary appears in Thomas' Bill, H. R. 382, 24th Cong., 1st session.

- Mar. 11. Burr map showing all lakes as "Les Lac Vieux Desert" transmitted to Congress. Record, 347.
- Mar. 21. Joint meeting of committees of House and Senate on boundary subject. Record 349.
- Mar. 22. Introduction of S. 177, which passed unchanged as to definition of boundary.
S. 177 passed as a companion bill to S. 178, which dealt with public lands in Michigan.
See pages 5, 6, 7 and 8, Plaintiff's brief, for a complete history of the bills before House and Senate.
1838. The erroneous Judson map published by the authority of the Legislative Assembly appears (Plaintiff's Exhibit 175), reproduced opposite page 50, Plaintiff's brief.
1840. Captain Cram surveys part of boundary and makes report based on erroneous Judson map and erroneous information from the Indians that there is no lake at the head of the Montreal. Plaintiff's Exhibit 15.
1841. Captain Cram fails to correct his erroneous statement that the boundary is impossible. Plaintiff's Exhibit 23.
- 1846, Aug. 6. Wisconsin Enabling Act passed. See pages 15 and 16 Plaintiff's brief.
1847. Burt survey of conditional line described in Wisconsin Enabling Act. Plaintiff's Exhibits 35 and 36, and Defendant's Exhibit 198.
- 1848, May 29. Wisconsin admitted with grant, subject to ratification by Michigan.

The Michigan Constitution of 1850 Did Not Ratify the Adjustment Suggested in the Wisconsin Enabling Act.

The Wisconsin Enabling Act proposed a new boundary in the Montreal and Menominee sectors. The language of the grant clearly indicates that the new line shall be effective only if ratified by some *affirmative* act of the State of Michigan. Failure to act could not be held to be ratification.

The grant to Wisconsin was in the nature of an overture to Michigan. Congress took the first step whereby Michigan could if it saw fit ratify a new line. Congress recognized that ratification by Michigan meant to that State the relinquishment of territory. She was therefore given two years in which to consider and determine whether she should ratify. It is important here to observe that the Wisconsin Enabling Act does *not* say that if Michigan takes no action within two years she shall be deemed to have ratified. The only construction possible is that Congress expected Michigan to take some affirmative action. If she did not so act, then as to the territory in dispute, Wisconsin gained nothing and Michigan lost nothing.

It must be borne in mind that at the time of the Wisconsin Enabling Act, Congress, Wisconsin and Michigan believed and relied upon the information given by Captain Cram that Lake Vieux Desert was a necessary point in the boundary. This point was fixed in the Wisconsin Enabling Act as a result of that error.

The other adjustments suggested were:

1. That the line leave the Montreal at Cram's monument.
2. That the islands in the Menominee and Brule rivers be divided between Wisconsin and Michigan.

The Michigan constitution of 1850 adopts the point in Lake of the Desert, determined by Cram, to be a necessary point in the boundary. (See Cram's reports, Plaintiff's Exhibits 15 and 23.)

1. The Michigan constitution fixes the headwaters of the Montreal as the terminus on that river and *not Cram's monument*. Wisconsin claims that Douglas Houghton, State Geologist, had agreed with Captain Cram upon the point to be known as the headwaters of the Montreal. This position hardly seems tenable in view of the quotation from the Journal of Douglas Houghton (Defendant's Exhibit 7), date of July 27, 1841, wherein he says:

"The forks at the junction of the Gros Pin and Sapin rivers may be considered as the head of the Montreal River, or its source must be in one of those two rivers. The two streams mentioned are two mere creeks, 40 to 60 feet over, and of nearly equal size, but I should think the river Sapin to have somewhat the greater amount of water. The Gros Pin is the stream farthest south, and the lake forming the source of this may be considered as the head of the Montreal River." Sheet 11, last half second paragraph, under date July 27, Defendant's Exhibit 7.

Thus the suggested adjustment as to Cram's monument was not accepted.

In later proposed constitutions the same Cram monument was suggested, but never adopted by Michigan.

The constitution of 1909 defines the "headwaters" as Island Lake, "thence through the middle of the main channel of the westerly branch of the Montreal River to *Island Lake, the headwaters thereof*," Michigan constitution of 1909.

2. The constitution of 1850 is silent as to the division of islands and defines the main channel of the Brule and Menominee rivers as the boundary.

If the main channel is the boundary, many of the islands claimed by defendant are within the State of Michigan.

Plaintiff's Exhibit 38 indicates that the definition of the boundary in the constitution of 1850 was reported to the convention by Mr. McClelland, chairman of that committee.

Mr. McClelland was the Congressman who counsel says "consented to the boundary" by amending the Wisconsin Enabling Act to provide ratification by Michigan. See Defendant's Brief, page 81.

To hold the constitution of 1850 as a ratification would be to determine in effect that plaintiff must surrender to defendant Merryman Island, Sawyer Island and Sugar Island, although not claimed by Wisconsin in its answer.

The Missing Link in the Boundary Which Wisconsin Claims Has Been Established by Ratification.

MENOMINEE RIVER SECTOR.

It is a conceded fact that Wisconsin is taxing islands outside her constitutional boundaries and within Michigan's constitutional boundaries, seventeen in number. Defendant's Brief, page 2.

It is also a fact that Michigan possesses islands which would belong to Wisconsin under the division suggested in the Wisconsin Enabling Act, three in number, as follows:

Sheet 31, Defendant's Exhibit 198, shows an island surveyed in Wisconsin in 1855, occupied as part of the trading post farm in Michigan before the surveys. Record, page 209, and Plaintiff's Exhibit 172.

Taxation abandoned by Wisconsin. Defendant's Exhibit 366.

Sheet 36, Defendant's Exhibit 197, shows the survey of Sugar Island in Michigan.

Sheet 25, Defendant's Exhibit 197, shows survey of Merryman Island in Michigan. The island was surveyed in Wisconsin as shown by sheet 28, Defendant's Exhibit 198.

There are also ten large islands in the Menominee River unsurveyed and untaxed, constituting a "no-man's-land" but admitted to be on the Michigan side of the main channel. Plaintiff's Exhibit 172.

The many islands on the Wisconsin side are not mentioned and it appears there are 131 in all, so that by accepting the channel as the boundary Wisconsin will have 101 and Michigan 30. (Cram's second report Plaintiff's Exhibit 23, says there are 131 islands.)

Counsel for Wisconsin, although repeatedly requested, has failed to state what line Wisconsin claims as a boundary in this sector.

The only statement counsel is willing to make is that "Defendant claims all islands below Quinnesee Falls."

This does not indicate any line as a boundary and the islands on the Michigan side of the main channel, so claimed are at present in the condition shown above.

Seventeen are surveyed in Wisconsin.

Three (the principal ones) are surveyed in Michigan.

Ten are unsurveyed.

The facts do not justify any theory of Ratification or Acquiescence.

Acquiescence.

ACQUIESCENCE TO DETERMINE A BOUNDARY MUST BE ACQUIESCENCE IN A DEFINITE, COMPLETE LINE.

There can be no acquiescence in a line which is not definite and certain. The doctrine can only be applied where lapse of the required time during possession up to a definite line has occurred.

To hold that any boundary has been established between these states is to effectuate a grant or compact passing jurisdiction. But, if the acquiescence alleged be in an incomplete line it is ineffectual to confirm jurisdiction against a prior grant.

In the case of *Rhode Island vs. Massachusetts*, 4 Howard 591, this Court laid down the doctrine that lapse of time could not effect a bar in matters between states, but only was effectual as evidence; that acquiescence in a *possible construction* definitely applied to a line of doubtful definition would by lapse of time be conclusive.

The acquiescence alleged in this case is to a redefinition of a line, *supposed erroneously to be incomplete*.

In the Montreal sector, Michigan has never *knowingly* acquiesced in any line claimed by Wisconsin; in the Menominee-Brule sector Michigan never ratified the changes proposed in the Wisconsin Enabling Act and acquiesced in no boundary line common to the two states. There is, and has been since Wisconsin became a state, confusion and uncertainty in the islands of the two rivers and no one is able to say where the boundary exists today. In the islands of Green Bay (surveyed as a part of the territory of Michigan)

it clearly appears that much of the area of the islands is under the jurisdiction of neither state, yet they are claimed by Wisconsin solely because a Federal department wrongfully returned certain of the descriptions to that state for taxation.

To apply the doctrine of acquiescence in this case is to charge Michigan with the knowledge in 1846 that the grant defined in her enabling act defined a possible boundary; that it defined the line which she claims now as the true line.

Michigan did not have this knowledge in 1846 nor 1850. She never acquired such knowledge until 1907 when Peter White first communicated to the Governor that the west branch of the Montreal River was the main branch, and that Island Lake was the headwater of the river. The adoption of appropriate language to make such claim then appeared in Michigan's constitution of 1909.

It was not until 1919 when the Michigan Boundary Commission was created that the state learned that Lake Vieux Desert, as now known by that name was not a point in the boundary intended by Congress.

Congress never made but one grant to Michigan. Congress has never modified that original grant.

There have been no commissioners appointed to determine or lay out a line. There have been no contracts with Wisconsin.

It is undisputed that Congress, Wisconsin and Michigan were grievously misled by the reports of Captain Cram. So quickly as Michigan gained knowledge of the true facts, so soon has she acted to preserve the boundary Congress intended she should have.

Douglas Houghton Did Not Determine the Boundary Impossible and He Did Not Act as a Boundary Commissioner With Cram.

On July 20, 1840, Douglas Houghton learned of some doubt as to the line, after being at La Pointe, Wisconsin, where Lucius Lyon heard the same report in the spring of the same year. Plaintiff's Exhibit 16.

In December, 1840, Cram reported to Col. J. J. Abert that the line was impossible. Plaintiff's Exhibit 15, page 9.

December 16, 1840, Douglas Houghton wrote to Governor Woodbridge of Michigan that the line was impossible. In this letter and his journal it appears that he was not on the line that summer, except at the mouth of the Montreal. Plaintiff's Exhibit 47. Thus it appears that the information given Governor Woodbridge was learned by Houghton from Captain Cram and not by reason of his own experiences.

Houghton was appointed commissioner to attend conjointly with a commissioner to be appointed by the general government "and who by their concurrent action shall so establish the boundary in question, if practicable, as shall be in conformity with the manifest intent of the act of Congress." Plaintiff's Exhibit 20.

No commissioner was appointed by the general government and Captain Cram was sent back under a further appropriation for a "survey and examination of the country situated between the *mouaths* of the Menominee and Montreal Rivers * * * to cause to be made a plat or plan of such surveys and examination, which *shall be returned to Congress* * * * for the purpose of designating and marking the boundary * * * agreeable to the true intent and meaning * * * of the act." Plaintiff's Exhibit 21.

Lucius Lyon and the Burt Survey.

Lucius Lyon never determined the boundary *impossible*. While at La Pointe, Wisconsin, in the spring of 1840 he was told the line was in doubt, evidently by some one in possession of the erroneous Farmer map.

In 1848, as Surveyor General, he approved the plat of the Burt survey as being in "conformity with the field notes."

There is no question raised as to this fact, nor the fact that Burt did survey the line according to the Wisconsin Enabling Act, as he was instructed to do. Plaintiff's Exhibits 35 and 36. Neither Lyon nor Burt had any latitude in marking the boundary line. They were instructed to mark the line in accord with the Wisconsin Enabling Act, a line considered then only as provisional, subject to ratification by Michigan.

The State of Michigan had no hand in this survey and this record is barren of any proof that it ever had any notice that it had been made or filed.

Green Bay Sector.

SO FAR AS ANY AGENCY OF THE GOVERNMENT DETERMINED THE BOUNDARY IN THIS SECTOR, IT WAS THE STRAWBERRY AND PORTE DES MORTE PASSAGES.

In 1842 Cram, as a part of his duties assigned in 1841, charted these passages and reported the chart to Congress. Cram's report, Plaintiff's Exhibit 94.

Cram's second report, dated February 10, 1842 (Plaintiff's Exhibit 23), says:

"It only remains necessary to make the survey of the channels of Green Bay."

Plaintiff's Exhibit 97 is the chart of these passages and returned by Cram to Congress with his report, Plaintiff's Exhibit 94, in which Cram, after speaking of general conditions on Lake Michigan, number of disasters, their causes, etc., says:

"Commencing at Death's door, *the entrance* of Green Bay, and going round the lake to a point nearly opposite, on the east side, we pass through more than 500 miles of country, etc."

Plaintiff's Exhibit 94, page 17.

Plaintiff's Exhibit 99 is the first chart of the Rock Island passage and the water west of Chambers Island. This was dated 1864 and was based on surveys of 1863 and 1864.

It is now known that these islands were surveyed while a part of Michigan territory in 1834 (Plaintiff's Exhibit 57, page 8), and in connection with the base line afterwards adopted by Wisconsin. Defendant's Exhibit 181 and Fig. 26 of Defendant's map supplement.

This is the reason therefore for the return of the descriptions on all the islands in dispute to Wisconsin for taxation.

If there was ever any construction placed upon a doubtful line in this sector, it was not in accord with the action of the Federal Land Department.

There is no definite boundary in this sector *on any map* and no description thereof extant, except the enabling acts and constitutions, all of which described the line as the "center of the most usual ship channel."

Wisconsin's possession is found solely on the wrongful act of the Land Department in returning these lands for taxation contrary to the construction placed thereon by another Federal agent, Captain Cram, who said that Death's

Door was *the* entrance to Green Bay. Such wrongful act, without the knowledge or consent of Michigan, cannot be made the basis of a claim for territory by acquiescence.

Further, it appears that the situation as to taxation of lands in Washington, Chambers and Rock Islands is the same as in the Menominee River.

Defendant's Exhibit 333 appears to list all the transfers of title on the above islands. It shows affirmatively that there have been no transfers or taxation on Rock Island and only a portion of Chambers and Washington.

We quote from page 244 of the record where the Register of Deeds was identifying the entire transfers made:

"Q. And the description of property in that exhibit relates to what islands, if any?

A. This here was mostly Washington Island, and some Chambers Island but nothing in Rock Island."

Plaintiff's Exhibit 121 is a map showing about one-sixth of the area of Washington Island. Comparing Exhibit 333, above referred to, with Plaintiff's Exhibit 121, it appears that patents have never been granted nor the lands entered for taxation on the following descriptions:

N. W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ section 25, town 34, range 29.

Frac. section 15, town 34, range 29.

N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ section 26, town 34, range 29.

N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ section 26, town 34, range 29.

All of section 35, except S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$.

When it is considered that these lands were surveyed as a part of Michigan territory, the question arises, When or in

what manner has Wisconsin exercised jurisdiction over the lands above? In what manner has jurisdiction been exercised over Rock Island? What portions of Chambers Island does Wisconsin claim to have assumed jurisdiction over.

These pertinent questions naturally raise another and that is, can it be said that Michigan has acquiesced in Wisconsin's open, notorious and hostile possession of these lands?

The principal traffic in and out of Green Bay from 1830 to 1836 was in schooners between Green Bay settlement and the lower Lake Michigan ports, usually Chicago.

Plaintiff's Exhibit 57, page 15, shows first cargo of lumber exported from Green Bay to Chicago in 1834.

On page 17, it shows vessels in 1835 at Green Bay were steamers and schooners, 10 of the former and 24 of the latter. The steamers were from Buffalo or Chicago and most of the schooners from Chicago or Saint Joe.

Plaintiff's Exhibit 88 under date of 1833, the petition for harbor improvements states, "More than half the *schooners* have grounded on the flats."

Plaintiff's Exhibit 124 shows on Lake Michigan, in 1833, 11 steamers and 48 vessels.

Plaintiff's Exhibit 128, page 24, shows the date of the first steamers from Buffalo as 1834, the first regular line.

Plaintiff's Exhibit 92 indicates supplies for Chicago and other western towns came from Saint Joe on southern Lake Michigan.

Plaintiff's Exhibit 156, pages 3 and 4, dated in 1834, remarks on several schooners arriving at Green Bay from Chicago.

Plaintiff's Exhibit 92 shows that the vessel arrivals in 1836 were 450.

In connection with the sketch reproduced in this brief, showing the courses through Green Bay, we respectfully call attention to the following apparent facts:

For all trade to Green Bay the Strawberry or Eastern Passage is 4 miles shorter and is a passage "close aboard" a shore line with deep water and many prominent headlands and good harbors.

The Western passage was between the unmarked submerged Whaleback and Frying Pan Shoals, around Chambers Island Shoal and thence back around Green Island Shoal, unknown and unmarked.

The Eastern shore, as this record shows, had been traversed by the Indians and voyageurs and was well known.

For all trade to southern lake ports the Door was 16 miles shorter than the Rock Island passage.

For all trade to Mackinac, by way of Fox Islands, the Door passage is slightly shorter.

For the route to Mackinac north of Beaver Islands, Rock Island passage is slightly shorter.

The Rock Island passage was between unmarked shoals. See sketch or chart, Plaintiff's Exhibit 114.

The hazards of the Rock Island passage continue on one side or the other for a distance of over ten miles.

The Door passage is complete in two and one quarter miles. See courses laid out on Government chart, Plaintiff's Exhibit 114.

The diagram—figure 29 of map supplement to Defendant's brief—is a cross section in one plane only.

To make the passage available for the width shown it would be essential that no parallel cross section reduce the region of navigable water. To illustrate this point and its

bearing on the Rock Island passage we have taken Defendant's diagram (Fig. 29) and superimposed a red line indicating the bottom in a parallel cross section in the entrance to this passage. We have also superimposed by a green line a cross section at right angles to the course as laid upon the Government chart. Note on this course that Fisherman's Shoal is obscured by Rock Island. We have assumed that the soundings shown on the Government chart (Plaintiff's Exhibit 114) are shown in feet. It is well known that on all charts, soundings are in feet in the tinted areas only and in fathoms on the white.

To correct this error would greatly increase the exaggeration of the vertical distances and it is only important to the shoal areas which are in feet, but not in their relation to the greatest depths.

On Fig. 30 we have illustrated the position of the parallel cross section superimposed and also the right angle cross section which is in two planes.

On Fig. 31 we have in red ink indicated a cross section of the channel west of Chambers Island at the point of greatest obstruction, the plane used being shown in red ink on Fig. 32.

Defendant's Claim of Misstatement.

We have been accused by Defendant of several misstatements of fact. This we emphatically deny. Most of the points raised are immaterial, but we mention a few, which might be considered important and for the purpose of showing our good faith.

Counsel insists the lakes at the head of the Montreal were not known as Lakes of the Desert, but were called Pine

Woods Lakes at the date of the Michigan Enabling Act (1836). His claim is based on three maps which he calls attention to. We list the maps and also give the dates they bear as follows:

Defendant's Exhibit 141, date 1843.

Defendant's Exhibit 144, date 1848.

Defendant's Exhibit 146, date 1849.

The name of Pine Woods Lakes do not appear in any map, history paper or writing until Captain Cram had been back there and called the lakes by that name and the first map to bear that name after Cram's designation is a map published seven years after the Michigan Enabling Act.

We said and still believe that Captain Betts testified to coming from Chicago by schooner through the Door passage in 1845 and that the old Pilot Island light was then burning.

Captain Betts' testimony indicates he came earlier than 1855 and he testified (Record 17) that the old Plum Island light was discontinued when Pilot Island light was established. Plaintiff's Exhibit 109 conclusively proves this to have been in 1850. The record further shows four separate appropriations. "For a lighthouse on Pottawatomie (now Washington) Island at the entrance to Green Bay" prior to the appropriation of 1848 which definitely named *Porte des Morte* and beyond question was used on Pilot Island.

Captain Betts was one of the early keepers of Pottawatomie light and knew it had been located by mistake (Record 17). He also knew the traffic was between Green Bay and Chicago and used the anchorage in the Door in storms (Record 19).

Conclusion.

The very short time permitted us to file this reply brief will not allow of extended discussions of the many points raised in Defendant's Brief. We doubt the necessity of it. We doubt that it would be of any special aid to the Court in determining this case. The record is too large and the exhibits too extensive to warrant the use of the Court's time in determining small quibbles. We have tried to present the bigger issues and the proofs supporting our claims. This case is very largely one of fact. When these facts are resolved, then the rules of law laid down by this Court will become applicable. Our main brief presents our authorities and the doctrines we maintain are applicable here.

We respectfully submit that this record shows that Congress in 1836 made an original grant to Michigan; that such grant has never been amended or modified in any particular; that the boundary Congress intended to make for the south line of the upper peninsula consisted of two river systems, joined by a straight line connecting their headwaters; that an agent of the Federal Government reported to Congress that this line was an impossible boundary; that Michigan relied on that information as well as did Congress; that no other boundary was ever defined by Congress, and the only offer of an adjustment was never accepted. Michigan claims that when the true facts first came to her knowledge she acted with diligence and in a spirit of conciliation attempted to make settlement with Wisconsin. In this Michigan was unsuccessful, and this suit was brought asking this Court to determine that the original grant to Michigan, mistakenly

withheld from her, be now determined as the true line. No compacts, findings or agreements have intervened to modify her claim.

Michigan, therefore, respectfully submits that she is entitled to the decree prayed for.

Respectfully submitted,

ANDREW B. DOUGHERTY,

Attorney General;

CARL D. MOSIER,

Assistant Attorney General;

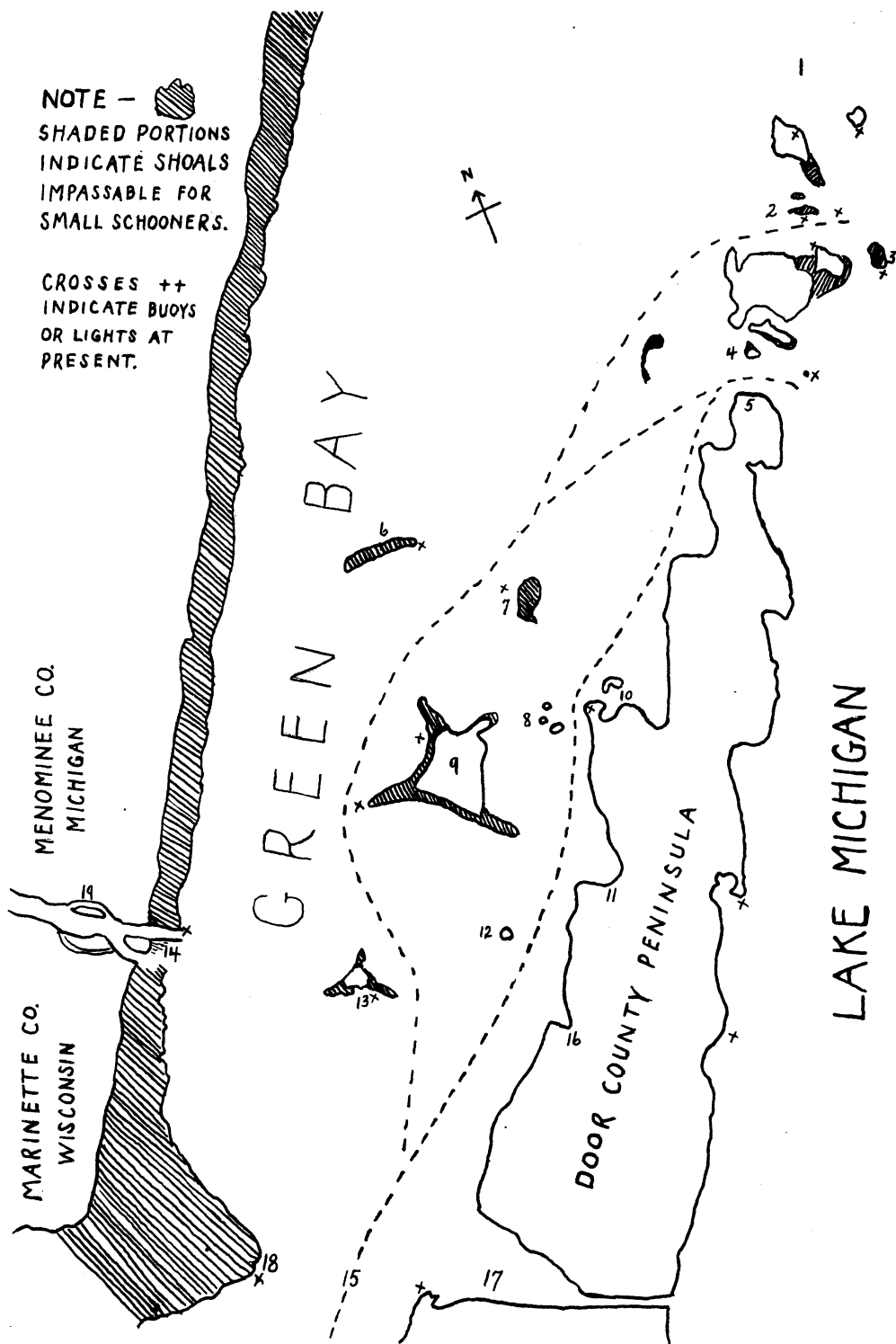
MEREDITH P. SAWYER,

Special Counsel,

Attorneys for the Plaintiff, State of Michigan.

Legend—Sketch Map.

1. St. Martin's passage.
2. Nine-foot shoal in mid-channel, Rock Island passage.
3. Fisherman's Shoal in entrance, Rock Island passage.
NOTE.—Light on Rock Island invisible on course from east.
4. Plum Island. Range lights and coast guard. Pilot Island directly east.
5. Door Bluff. Door passage is between 4 and 5.
6. Whaleback Shoal.
7. Frying Pan Shoal.
8. Strawberry Islands.
9. Chambers Island.
10. Eagle Bluff and Eagle Harbor, also Horseshoe Island.
11. Fish Creek.
12. Hat Island.
13. Green Island.
14. Menominee River.
15. Course to Green Bay, Wisconsin.
16. Egg Harbor.
17. Sturgeon Bay and ship canal.
18. Peshtigo Reef lightship.
19. Sugar Island in Menominee River.



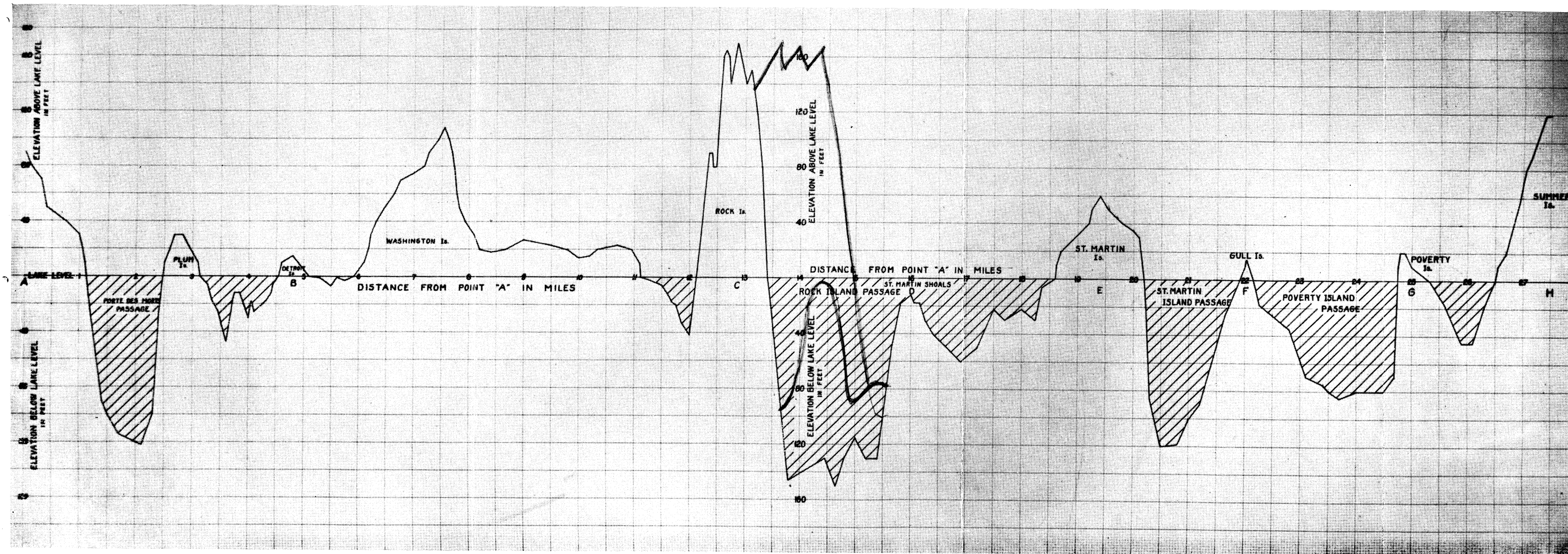


FIGURE 29.

Profile of Grand Traverse from north point of Door County peninsula to Summer Island, along line shown in black on next figure. The middle horizontal line indicates water level, and shaded areas below said line represent water in the various channels. Vertical distances are very much exaggerated in relation to horizontal distances. The altitudes and depths are obtained from contour lines on land areas and soundings of water, as shown on Michigan Exhibit 114.

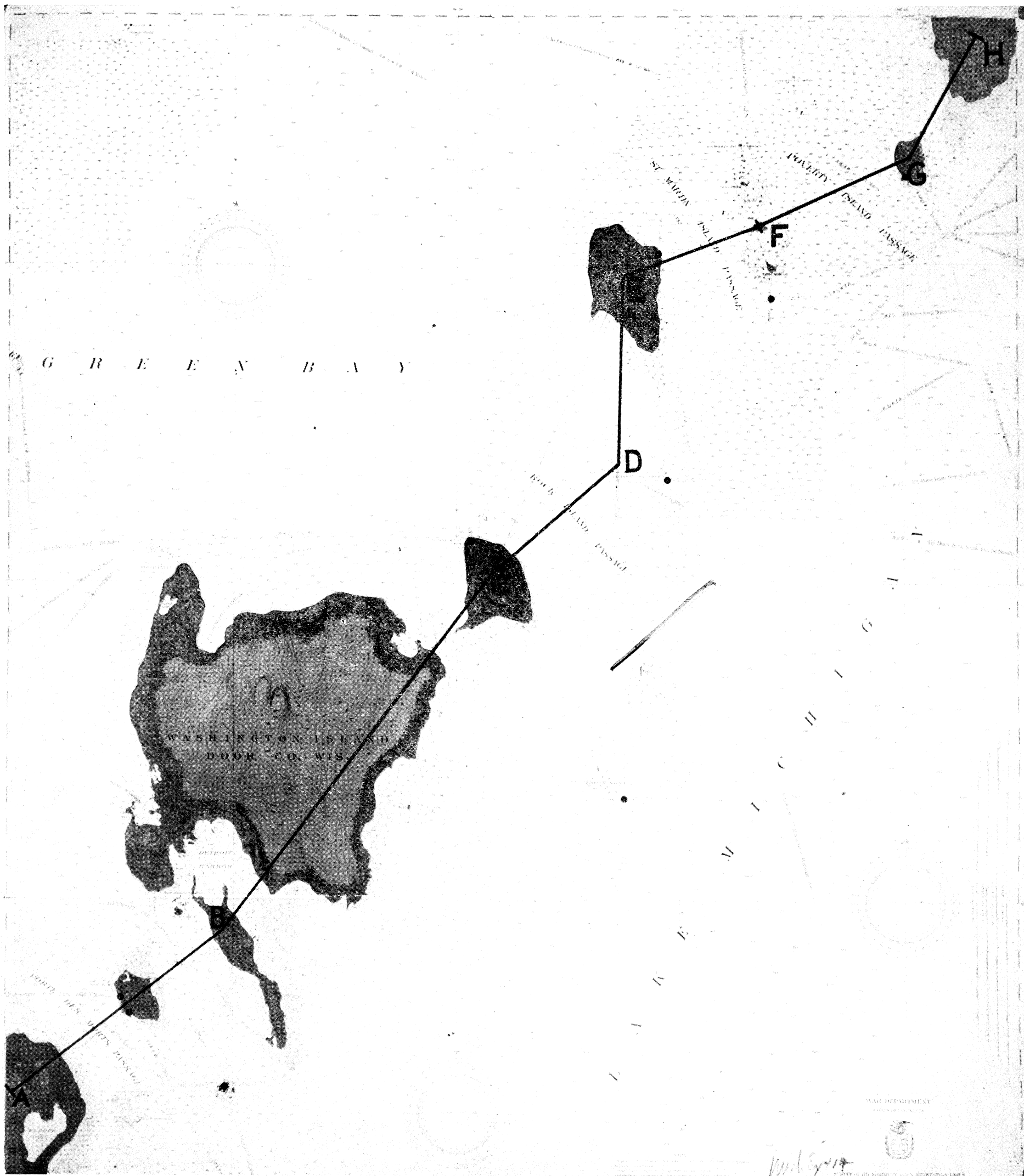


FIGURE 30.

Part of Michigan Exhibit 114, to which has been added heavy black line showing course of profile shown in preceding figure.

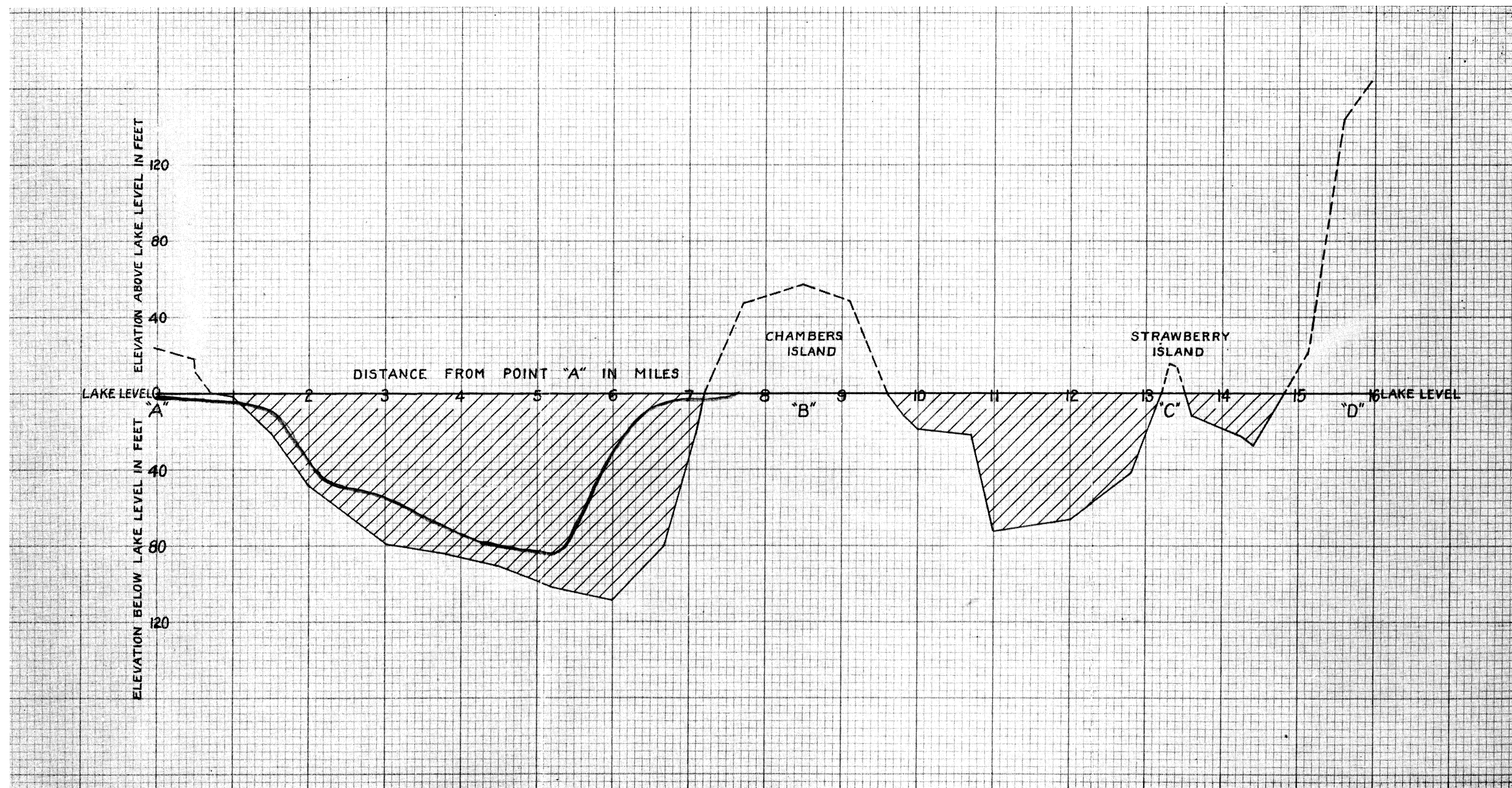


FIGURE 31.

Profile across Green Bay through Chambers Island and Strawberry Island along heavy black line shown on next figure. This profile is similar to that shown in Figure 29, except that Michigan Exhibit 115, from which the data was taken, does not give contours of islands, and hence the profile of the islands is not accurate. The profile on bottom of Bay is based on soundings shown on Michigan Exhibit 115, and is approximately accurate.

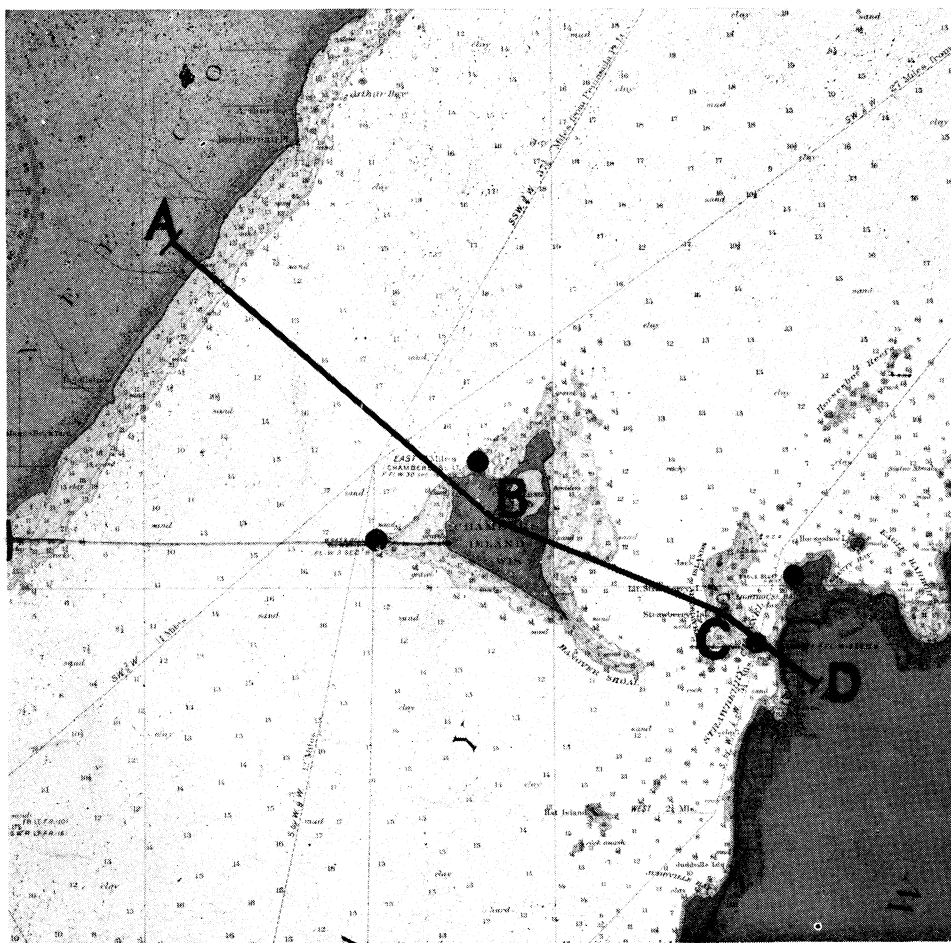


FIGURE 32.

Part of Michigan Exhibit 115, on which heavy black line has been drawn to indicate course of profile shown in preceding figure.

